INTERIOR BOARD OF INDIAN APPEALS

State of Iowa and Board of Supervisors of Pottawattamie County, Iowa
v. Great Plains Regional Director, Bureau of Indian Affairs

38 IBIA 42 (08/07/2002)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

STATE OF IOWA	:	Order Affirming Decision
	:	
and	:	
	:	
BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, IOWA,	:	
Appellants	:	Docket Nos. IBIA 01-14-A
	:	IBIA 01-15-A
v.	:	
	:	
GREAT PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 7, 2002

The State of Iowa (State) and the Board of Supervisors of Pottawattamie County, Iowa (County; collectively, Appellants), seek review of a September 15, 2000, decision issued by the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning taking certain property in the City of Carter Lake, Iowa, into trust status for the Ponca Tribe of Nebraska (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Federal trust relationship to the Tribe was terminated by the Act of September 5, 1962, Pub. L. No. 87-629, 25 U.S.C. §§ 971-980 (Termination Act), and was restored by the Ponca Restoration Act of October 31, 1990, Pub. L. No. 101-484, 25 U.S.C. §§ 983-983h (Restoration Act). 25 U.S.C. § 983a restores Federal recognition and provides that "[a]ll Federal laws of general application to Indians and Indian tribes (including the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), popularly known as the Indian Reorganization Act [IRA]) shall apply with respect to the Tribe and to the members." 25 U.S.C. § 983b(a) restores all of the Tribe's rights and privileges which were abrogated or diminished by the Tribe's termination. Subsection 983b(c) relates to the development of a land base for the Tribe. The subsection provides:

> The Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska, that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary (subject to any rights, liens, or taxes that exist prior to the date of

such transfer) in the name of the United States in trust for the benefit of the Tribe and shall be exempt from all taxes imposed by the Federal Government or any State or local government after such transfer. The Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the [IRA].

Subsection 983b(e) provides that "[r]eservation status shall not be granted to any land acquired by or for the Tribe."

25 U.S.C. § 983c restores the Tribe's and its members' rights to Federal services. It states:

> Notwithstanding any other provision of law, the Tribe and its members shall be eligible, on or after October 31, 1991, for all Federal services and benefits furnished to federally recognized tribes without regard to the existence of a reservation for the Tribe. In the case of Federal services available to members of federally recognized tribes residing on or near a reservation, members of the Tribe residing in Sarpy, Burt, Platte, Stanton, Holt, Hall, Wayne, Knox, Boyd, Madison, Douglas, or Lancaster Counties of Nebraska, Woodbury or Pottawattamie Counties of Iowa, or Charles Mix County of South Dakota shall be deemed to be residing on or near a reservation.

25 U.S.C. § 983h requires the development of an economic development plan (EDP) for the Tribe. Subsection 983h(b) provides that, in developing the EDP, the Secretary was to provide information to, and consult with, "the appropriate officials of the State and all appropriate local governmental officials." Subsection 983h(c) requires the inclusion of certain provisions in the EDP:

> Any economic development plan established by the Secretary under subsection (a) of this section shall provide that--
>
> (1) real property acquired by or for the Tribe located in Knox or Boyd Counties, Nebraska, shall be taken by the Secretary in the name of the United States in trust for the benefit of the Tribe;
>
> (2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to--
>
> (A) all legal rights and interests in such land held by any person at the time of acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Nebraska pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

The EDP was prepared and submitted to Congress by the Assistant Secretary - Indian Affairs on February 17, 2000.

By Resolution No. 00-01, dated January 10, 2000, the Tribe requested that BIA accept a parcel of land in trust for it. The parcel is described as Lots 20, 21 and 22, together with the part of the abandoned railroad right-of-way located north of the existing Illinois Central Spur Tract in said Lots 21 and 22, all in the Auditor's Subdivision of section 21, T. 75, R. 44 W. of the 5th Principal Meridian, Pottawattamie County, Iowa. The parcel is located in the City of Carter Lake, Iowa. The resolution stated that the parcel would be used to provide services for tribal members, primarily health services under Indian Health Service and BIA programs contracted under the Indian Self-Determination Act. The resolution further stated that it was important for the parcel to be in trust so that the Tribe could carry out governmental functions.

Because the parcel is not in Knox or Boyd County, Nebraska, trust acquisition was not mandated under 25 U.S.C. § 983b(c). Therefore, BIA considered the request under 25 U.S.C. § 465, the section of the IRA which authorizes the acquisition of land in trust for IRA tribes, and under the implementing regulations in 25 C.F.R. Part 151. Because 25 U.S.C. § 983b(e) prohibited the creation of a reservation for the Tribe, BIA analyzed the request under 25 C.F.R. § 151.11, which relates to off-reservation trust land acquisitions.

The administrative record shows that on February 23, 2000, BIA notified the State, the County, and the City of Carter Lake that it was considering the Tribe's trust acquisition request and solicited comments from each entity, particularly including: "(1) The annual amount of property taxes currently levied on the property; (2) Any special assessments, and amounts thereof, which are currently assessed against the property; (3) Any governmental services which are currently provided to the property by your jurisdiction; and (4) If subject to zoning, how the property is currently zoned."

The administrative record does not include a response to BIA's inquiry from either Appellant. It shows, however, that the Tribe negotiated a "Cooperation and Jurisdictional Agreement" (Cooperative Agreement) with the City of Carter Lake.

Following receipt of other information relating to such issues as title to the parcel and whether or not there were any hazardous substances located on the property, and after requesting additional clarification from the Tribe as to the proposed use of the parcel, the Regional

Director issued the decision under review on September 15, 2000. Appellants each appealed from this decision.

The Board first repeats its standard of review and the burden of proof in trust acquisition cases. These were described in City of Lincoln City, Oregon v. Portland Area Director, 33 IBIA 102, 104 (1999), 1/ where the Board stated:

> [D]ecisions as to whether or not to take land into trust are discretionary. The Board does not substitute its judgment for BIA's in decisions based upon an exercise of discretion. Rather, the Board reviews such decisions "to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations." [City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 196, 96 I.D. 328, 330 (1989)].

Furthermore, when an appellant challenges BIA's exercise of discretion, it "bears the burden of proving that the [Regional] Director did not properly exercise his discretion." Id. However, when an appellant challenges legal determinations that BIA may have made in connection with a trust acquisition decision, it "bears the burden of proving that the [Regional] Director's decision was in error or not supported by substantial evidence." Id. See also County of Mille Lacs, Minnesota v. Midwest Regional Director, 37 IBIA 169, 170 (2002); Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37, 38-9 (1999).

Appellants challenge both legal and discretionary decisions made by the Regional Director. The Board first addresses the legal challenges.

The State contends that 25 U.S.C. § 465 is unconstitutional. In support of this argument, it cites South Dakota v. U.S. Department of the Interior, 69 F.3d 878 (8th Cir. 1995). The County also mentions and reserves this argument, but concedes that the Board has previously held that it lacks authority to declare an act of Congress unconstitutional.

South Dakota was vacated by the United States Supreme Court. 519 U.S. 919 (1996). Therefore, the Eighth Circuit's decision in South Dakota is not precedential. See United States v. Roberts, 185 F.3d 1125, 1136 (10th Cir. 1999). Furthermore, since the Supreme Court issued its order in South Dakota, the Tenth Circuit has explicitly rejected the reasoning in South Dakota, and has found 25 U.S.C. § 465 constitutional. Roberts, supra. The Supreme Court declined to review Roberts. 529 U.S. 1108 (2000). See also the opinion of the United States

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1/ Aff'd, City of Lincoln City v. United States Department of Interior, Civil No. 99-330-AS (D.Ore. Apr. 17, 2001).

District Court for the District of Oregon in City of Lincoln City, supra, slip op. at 23 (following Roberts). Thus the only precedential Federal court cases have held section 465 constitutional.

The State asks the Board to declare section 465 unconstitutional despite the fact that it has been held constitutional in Federal court. The Board has consistently held that, as part of the Executive Branch of government, it does not have the authority to declare an act of Congress unconstitutional. See, e.g., County of Mille Lacs, supra, 37 IBIA at 171; Oklahoma Petroleum Marketers Ass'n et al. v. Acting Muskogee Area Director, 35 IBIA 285, 287 (2000), and cases cited there. The Board continues to hold that it lacks authority to declare an act of Congress unconstitutional.

Appellants next contend that 25 U.S.C. § 983b(c) prohibits any trust acquisitions for the Tribe outside Knox and Boyd Counties, Nebraska. They argue that, by authorizing trust acquisitions in Knox and Boyd Counties, Congress intended to prohibit trust acquisitions anywhere else.

Subsection 983b(c) requires the Secretary to accept up to 1,500 acres in Knox and Boyd Counties, Nebraska, in trust for the Tribe. It authorizes the Secretary to exercise her discretion as to whether or not to take additional acreage in Knox and Boyd Counties into trust. Nothing in this subsection or any other section of the Restoration Act explicitly limits or prohibits trust land acquisitions outside Knox and Boyd Counties.

25 U.S.C. § 983a specifically applies the IRA to the Tribe. Congress placed no limitations on the applicability of the IRA. 25 U.S.C. § 465 is part of the IRA and authorizes the acquisition of land in trust for IRA tribes. Congress placed no limitations on the applicability of section 465. The Board concludes that the plain language of the Restoration Act provides that the Secretary has the same discretionary authority to take land into trust for the Tribe that she has for any other IRA tribe.

Appellants contend, however, that 25 U.S.C. § 983h(c) supports their argument. As quoted above, subsection 983h(c) deals with certain aspects of the EDP. It requires that real property acquired for the Tribe in Knox or Boyd County be taken by the Secretary in trust for the Tribe; real property taken in trust pursuant to the EDP be taken subject to any liens, mortgages, or previously levied and outstanding State or local taxes and be subject to foreclosure under the laws of the State of Nebraska; and real property transferred pursuant to the EDP be exempt from future Federal, State, and local taxes. Appellants argue that this section shows Congressional intent that only lands in Knox and Boyd Counties be taken in trust.

Provisions similar to those found in subsection 983h(c) are found in other acts restoring tribes to Federal recognition that also mandate the acquisition of certain lands in trust for the restored tribe. See, e.g., 25 U.S.C. § 711e(d) (Siletz Indian Tribe), 25 U.S.C. § 766 (Paiute

Indian Tribe of Utah), 25 U.S.C. § 903d(c) (Menominee Indian Tribe). The only distinction is that, because the Restoration Act specifically prohibited the creation of a reservation for the Tribe, these provisions are located under the Restoration Act's EDP sections, rather than under the reservation restoration sections which are found in other acts restoring Federal supervision. The provisions relate to the fact that, in mandating the trust acquisition of certain lands for a restored tribe, Congress also authorized the Secretary to acquire lands which were subject to mortgages, liens, and outstanding tax levies. Without such authorization, the Department could not accept title to any lands for which clear title could not be conveyed. Congress mandated trust land acquisitions only in Knox and Boyd Counties, Nebraska. Therefore, it found it necessary to mention only those lands in subsection 983h(c), and required that any foreclosures against such lands would be governed by the laws of the State of Nebraska. Cf. 25 U.S.C. § 711e(d) (mandated trust acquisitions applied only to lands within Lincoln County, Oregon; foreclosures were under the laws of the State of Oregon); 25 U.S.C. § 903d(c) (mandated trust acquisition only of lands located in Menominee County, Wisconsin; foreclosures were under the laws of the State of Wisconsin). The Board finds that 25 U.S.C. § 983h(c) does not support Appellants' argument that the Secretary could only acquire lands in trust for the Tribe in Knox and Boyd Counties, Nebraska. 2/

The legislative history of S. 1747, the bill which became the Restoration Act, also supports the Board's interpretation of subsection 983b(c). As originally introduced, section 4(c) of S. 1747 provided in pertinent part: "The Secretary shall accept any real property that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary * * * in the name of the United States in trust for the benefit of the Tribe." See 136 Cong. Rec. S 10014 (July 18, 1990). This section would have required the Secretary to accept in trust any and all real property, wherever located, that was transferred to it for the benefit of the Tribe.

The Department of the Interior objected to the unqualified nature of this mandatory land acquisition provision. In a September 13, 1990, prepared statement on S. 1747 presented to the Interior and Insular Affairs Committee of the House of Representatives, Ronal Eden, Deputy to the Assistant Secretary - Indian Affairs (Tribal Services), stated:

> We object to any requirement that the Secretary accept land in trust without geographical limitation. This would limit the Secretary's discretion to take land in trust under existing law. We recommend that such requirement as it appears in Sections 4(c) and 10(c)(1) be limited to the Tribe's original reservation in Boyd and Knox Counties, Nebraska as it existed at the time of enactment of [the Termination Act].

2/ The other tribal restoration acts cited also demonstrate that Congress knows how to limit land acquisitions to a particular geographical location, including limiting them to a specific county.

Section 4(c) of the bill was subsequently amended to read as 25 U.S.C. § 983b(c) presently appears. During House floor proceedings on the amended bill, Nebraska Representative Bereuter stated:

> [T]he measure before us today, as amended in the Interior Committee, permits the Tribe to acquire 1,500 acres of land for economic development, agricultural, and ceremonial and tribal purposes. Beyond that, the Secretary of the Interior will have the discretion, as he does currently for all other federally recognized tribes, to acquire additional lands to be designated as trust lands on behalf of the tribe.

136 Cong. Rec. 28339, 28341 (Oct. 10, 1990).

In addition, H.R. Report No. 101-776 (1990) specifically states at page 4 that Congress intended to "restrict[] the land that the Secretary can acquire for the economic development plan to Knox and Boyd Counties in Nebraska." (Emphasis added.)

The Board finds that the language of 25 U.S.C. § 983h(c), other provisions of the Restoration Act, and the legislative history all support the conclusion that the Restoration Act did not restrict the Secretary's discretionary authority to accept land in trust for the Tribe.

Appellants contend that they were not fully able to evaluate the Regional Director's decision because they did not receive information which they had requested under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Assuming any present appeal from the FOIA determination would be timely, Appellants are raising this argument in the wrong forum. Appeals from FOIA decisions are governed by 43 C.F.R. § 2.18. Subsection 2.18(c)(2) states that appeals are taken to the Freedom of Information Act officer in the Office of the Assistant Secretary - Policy, Budget and Administration (now titled Assistant Secretary - Policy, Management and Budget). The Board has no role in deciding FOIA appeals, and therefore lacks authority to grant Appellants any relief based on this argument.

The State contends that it was prejudiced by the Secretary's failure to comply with the requirements of 25 U.S.C. § 983h, concerning the preparation of an EDP for the Tribe. The State argues that the Secretary erred by not providing it with a copy of the EDP and by failing to consult with it. Subsection 983h(b)(1) provides in pertinent part: "To ensure that legitimate State and local interests are not prejudiced by the economic development plan * * *, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State with respect to the proposed economic development plan."

The State's argument overlooks the fact that subsection 983(5) specifically defines "State," for purposes of the Restoration Act, to mean "the State of Nebraska." Assuming

anyway that 25 U.S.C. § 983h required consultation with the State of Iowa, Appendix C of the EDP shows that a copy was provided to the State of Iowa and that the State failed to comment. The Board rejects the State's attempt to challenge the EDP in the context of this appeal.

Several of Appellants' arguments based on the regulations suggest that the Regional Director failed to follow legal requirements in those regulations. The Board treats these arguments as challenges to the Regional Director's legal conclusions. It first addresses Appellants' arguments in regard to 25 C.F.R. §§ 151.11(b) through (d).

Subsection 151.11(b) requires BIA to consider the distance between the existing boundaries of a tribe's reservation and the property proposed for trust acquisition, and to give greater scrutiny to a proposed trust acquisition as that distance increases. The State contends that the Regional Director did not properly consider this factor, but offers nothing more. The County argues that the property at issue is over 90 miles from the Tribe's administrative headquarters in Niobrara, Nebraska, and that there are only a few Tribal members in Pottawattamie County.

The Restoration Act specifically prohibited the creation of a reservation for the Tribe. 25 U.S.C. § 983b(e). Therefore, there are no reservation boundaries. Rather than establishing a reservation, Congress designated service areas for the Tribe, and provided that Tribal members residing in those areas would be deemed to be residing on or near a reservation.

As originally introduced, the Restoration Act included in the Tribe's service areas only Knox, Boyd, Madison, Douglas, and Lancaster Counties in Nebraska and Charles Mix County in South Dakota. The Department objected to the extent of this designated service area. In his September 13, 1990, prepared statement on S. 1747, the Deputy to the Assistant Secretary - Indian Affairs (Tribal Services) wrote:

> We object to this expansion of the service area. The Counties of Douglas, Lancaster and Madison are noncontiguous to Boyd and Knox Counties, the location of the former Ponca reservation, as well as to each other. The service area as proposed in this section of the bill is rather large and could cause logistical problems in providing services to persons residing in six counties scattered over such a large area. * * * [W]e suggest the bill be amended to limit the service area to Boyd, Charles Mix, and Knox Counties, which are contiguous and include the former reservation of the Ponca Tribe.

In distinction to its acceptance of the Department's objection to the extent of mandatory trust land acquisitions, discussed above, Congress did not accept this objection, but passed the bill without reducing the Tribe's service areas. In fact, in the Act of February 12, 1996, Pub. L. No. 104-109, § 12, 110 Stat. 763, 765, Congress amended the Restoration Act to increase

the Tribe's service areas. In discussing this amendment prior to passage in the Senate, Senator McCain stated:

> Section 12 of the bill amends section 5 of the Ponca Restoration Act to modify the service area of the Ponca Indian Tribe to include Indians living in Sarpy, Burt, Platte, Stanton, Hall, Holt, and Wayne Counties in Nebraska and Indians living in Woodbury and Pottawattamie Counties in Iowa. It has been estimated that there are 110 Ponca tribal members living in these counties who are not currently eligible to receive services from the tribe. This amendment to the Ponca Restoration Act would make these members eligible for tribal services from the Ponca Tribe.

142 Cong. Rec. S 530, 531 (Jan. 26, 1996).

The Tribe's service areas include Pottawattamie County, Iowa. The Board concludes that, under the circumstances of this case, a proposed trust acquisition of land located within the Tribe's legislatively designated service areas does not require the greater scrutiny described in 25 C.F.R. § 151.11(b).

Subsection 151.11(c) requires a tribe proposing to acquire land for business purposes to provide a plan which specifies the anticipated economic benefits associated with the proposed use. As it did with subsection 151.11(b), the State merely asserts that the Regional Director did not properly address this subsection. The County contends that there is no plan which specifically relates to this land. It notes that the EDP "refers vaguely to manufacturing, service and niche retail businesses in its discussion of lands in * * * Pottawattamie County, Iowa," but asserts that the EDP "does not specifically mention these uses in conjunction with this specific site." County's Opening Brief at 18. It argues that the EDP is therefore inadequate to meet the requirements of subsection 151.11(c).

The Tribe does not propose to use this land for business purposes. Rather, it proposes to use it for the provision of governmental services. Therefore, there is no need for the preparation of a plan specifying anticipated economic benefits associated with a proposed business use.

Subsection 151.11(d) requires that State and local governmental entities be notified of an off-reservation trust acquisition request and be given 30 days in which to comment on the potential impacts of trust acquisition on "regulatory jurisdiction, real property taxes and special assessments." Once again, the State only asserts that the Regional Director's decision is inadequate under this subsection. The County appears to be addressing the notification requirement at pages 18-19 of its Opening Brief, when it discusses "Miscellaneous Regulatory Issues," and states that it "is not raising the issue of its receipt of notice on appeal." The County had previously argued that it did not receive notification of the pending trust acquisition request. In this

section of its brief, it admits receipt, although taking issue with the office to which notice was sent.

Under these circumstances, the only challenge to the Regional Director's decision under subsection 151.11(d) is the State's unsupported contention that the Regional Director violated the subsection. Not only does this statement not carry the State's burden of proof, but the administrative record affirmatively shows that the State received notification.

25 C.F.R. § 115.11(a) provides that off-reservation trust acquisitions must be considered under the factors set out in 25 C.F.R. § 151.10(a) through (c) and (e) through (h). Appellants object to the Regional Director's decision under each of these subsections, except subsection (h). They raise a legal argument in regard to the Regional Director's discussion in regard to subsection 151.10(a).

Subsection 151.10(a) requires the Regional Director to determine whether there is statutory authority for the trust acquisition. Appellants' arguments in regard to the constitutionality of 25 U.S.C. § 465 and to the restrictive nature of 25 U.S.C. § 983b(c) have already been discussed. In addition to these arguments, the State contends that the Regional Director did not cite any statutory authority for taking Iowa lands into trust. For purposes of addressing this argument, the Board assumes that the State is arguing either that the Regional Director was required to cite authority for taking land in Iowa into trust for this Tribe or for any out-of-state tribe, rather than arguing that there must be special statutory authority for taking any land in trust in Iowa for any tribe, including an in-state tribe.

This trust acquisition is authorized by 25 U.S.C. § 465. Nothing in that statute limits the Secretary's discretion in such a way that she may take land into trust for a tribe only in the state in which the tribe has its headquarters or in the state which appears in the tribe's name. The Board finds that no special authorization was required for the Secretary to take land located in Iowa into trust for the Tribe.

The remainder of Appellants' arguments under Part 151 challenge the Regional Director's exercise of discretion.

25 C.F.R. § 151.10(b) requires BIA to consider the Tribe's need for additional land. Appellants contend that the Regional Director should not have relied on the Tribe's representations as to its need, but should have conducted an independent analysis. They argue that such an analysis would have shown that there is no need for a Tribal health facility in Iowa, because there are not many Tribal members in Iowa and because there are other Indian health facilities in the area. They further contend that the land does not need to be in trust to qualify for Federal and State funding.

Appellants' argument does not address the Tribe's need for additional land, but rather takes issue with the Tribe's proposed use of the land. The Regional Director considered the facts that the Tribe was newly restored, had a very small land base, and needed trust land for the provision of governmental services. Appellants' objection to the proposed use of the land does not carry their burden of showing that the Regional Director did not properly exercise her discretion in addressing this criterion.

Under subsection 151.10(c), BIA is required to consider the purposes for which the land will be used. Appellants contend that the Regional Director's analysis of this factor was inadequate because she only addressed the use of the land as a health care facility, when she had knowledge and information that the Tribe actually intends to use the land for gaming. The State bases its factual assertion as to the Tribe's intent on a July 15, 1997, letter to the Regional Director from its own Assistant Attorney General. That letter states that agents for the Tribe contacted Iowa State officials in regard to building a casino in Woodbury County, Iowa. The County provides additional information, including a September 23, 1998, letter to a State official concerning the possibility and legality of establishing gaming operations on lands in Iowa; a September 24, 1998, memorandum to the Tribe from an attorney, opining that lands acquired in trust for the Tribe would fall under the restored lands exception in the National Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(iii), so that gaming could be conducted on those lands even though they were acquired after October 17, 1988; several newspaper articles speculating about the possible use of the City of Carter Lake property for gaming purposes; and an April 3, 1998, letter to BIA from the County expressing no position in regard to the Tribe's EDP, but commenting that the County would object to the use of any land for gaming.

The State bases its argument in part on Village of Ruidoso, New Mexico v. Albuquerque Area Director, 32 IBIA 130, 139 (1998). In Ruidoso, the Board held that "[i]n order to demonstrate that it has considered the relevant facts related to the purpose for which a proposed land acquisition will be used, BIA should include in its decision a discussion of the facts which are, or should be, within BIA's knowledge and which have some bearing on the present or future use of the property." 32 IBIA at 139. The facts in Ruidoso which the Board found relevant, but unaddressed by the Area Director, included the donation of the property at issue to the tribe by a gaming operator which had an established gaming relationship with the tribe, and the apparent prior use of the property for gaming-related purposes.

In distinction, the property here was purchased by the Tribe and is currently used for health care facilities. The Tribe has continuously stated that it intends to use the property for health care facilities or for other Tribal governmental operations. There is nothing other than pure speculation to suggest that the Tribe intends to use this property for gaming purposes.

The Board has previously held that mere speculation that a tribe might, at some future time, attempt to use trust land for gaming purposes does not require BIA to consider gaming

as a use of the property in deciding whether to acquire the property in trust. See, e.g., Town of Charlestown, Rhode Island v. Eastern Area Director, 35 IBIA 93, 103 (2000) (The Town argued that a gaming use must be presupposed because of the tribe's prior attempts to acquire land in trust for gaming purposes); Lake Montezuma Property Owners Ass'n, Inc. v. Phoenix Area Director, 34 IBIA 235, 238 (2000); Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37, 41 (1999).

Appellants have not cited anything in this case which shows that the Tribe intends to use this parcel for a purpose other than what it has expressed. Their speculations do not carry their burden of proving that the Regional Director did not properly exercise her discretion by considering only the proposed use of this parcel which the Tribe articulated.

25 C.F.R. § 151.10(e) requires that BIA consider the impact on the State and its political subdivisions that would result from removing the land from the tax rolls. The State objects to the Regional Director's failure to refer to public tax rolls in determining the impact of removing this parcel from the tax rolls. The County states that any tax impact on it will not be mitigated by the Cooperative Agreement with the City of Carter Lake.

It appears that both the State and the County are here attempting to overcome the fact that neither of them responded to BIA's request for information concerning the impact acquiring the parcel in trust would have on them. Because they did not respond, the Regional Director found that she was not able to measure the impact on them. The Board has previously held that when a governmental entity provides incorrect or incomplete tax information in response to a BIA request for information, it may not later complain about the BIA's use of that incorrect or incomplete information. Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director, 36 IBIA 14 (2001); Avoyelles Parish, Louisiana, Police Jury v. Eastern Area Director, 34 IBIA 149 (1999).

The administrative record here shows that the Regional Director was aware from other sources that the total property taxes assessed against this property were $2,294. Taking that amount of taxes into consideration, the Regional Director relied on the Cooperative Agreement between the Tribe and the City of Carter Lake in determining that the impact on taxing authorities would be minimal. Section VI of the Cooperative Agreement provides:

> A. The Tribe agrees to collect and remit to the appropriate entities all applicable City, County, State and federal taxes lawfully incurred by the Tribe on The Property. The applicability of City, County and State taxes shall be determined by federal law. [Emphasis added.]
>
> B. So long as title to The Property is held by the United States in Trust for the Tribe, The Property shall not be subject to city, county or state

> taxes. However the Tribe shall make annual payments in lieu of taxes in a dollar amount equal to the real property taxes to which The Property would be subject were it not exempt from taxation. Each annual payment in lieu of taxes shall be made by the Tribe on or before the calendar day set forth in the Iowa statutes for the payment of real property taxes.

Both Appellants object to the Regional Director's consideration of the Cooperative Agreement with the City of Carter Lake. The State contends that the City of Carter Lake lacks authority under State law to enter into such an agreement; while the County argues that the agreement is not binding on either the County or the State and objects to the Tribe's failure to enter into similar negotiations with it.

The City of Carter Lake negotiated the Cooperative Agreement with the Tribe. In so doing, it represented to the Tribe and to the Federal government that it had authority to enter into such an agreement. BIA may rely on the representations of a local governmental entity as to its legal authority. BIA is not required to conduct an independent legal analysis of the authority delegated to local governmental entities under state law.

Appellants have failed to show that the Regional Director did not properly consider the criterion set out in 25 C.F.R. § 151.10(e).

Under 25 C.F.R. § 151.10(f), BIA is required to consider jurisdictional conflicts and potential conflicts of land use. Appellants again contend that the Regional Director's decision on this factor is inadequate because he relied on the Cooperative Agreement between the Tribe and the City of Carter Lake.

To repeat, Appellants provided no response to BIA when it requested comments on the impacts of the proposed trust acquisition. The Regional Director therefore analyzed the potential jurisdictional and land use problems in light of the Cooperative Agreement. The Agreement addresses civil, criminal, and regulatory jurisdiction.

Appellants state their conclusion that the Regional Director failed to consider relevant jurisdictional issues, but do not state what those issues are. At most, Appellants have shown that they disagree with the Regional Director's analysis, but they have not carried their burden of showing that the Regional Director did not properly consider this factor.

25 C.F.R. § 151.10(g) requires BIA to consider whether it is equipped to discharge the additional responsibilities that would arise from the land being held in trust. The State contends that the Regional Director should have analyzed the service area and the distances

between its offices and the Tribe's service locations, and should have stated how it was equipped to absorb or minimize these additional responsibilities. The County argues that the Regional Director should have discussed the Tribe's EDP and again argues that she should not have relied on the Cooperative Agreement. It asserts:

> The EDP contemplates that trust parcels will be scattered among 12 counties in two states for a resident population of 785 members. * * * The administrative burden on [BIA] officials responsible for realty, public safety, and economic development services by such a land acquisition scheme would be all out of proportion to any benefit that could be produced. The [Regional Director's] Decision should have contained a serious evaluation of these issues.

County's Opening Brief at 16.

BIA is uniquely qualified to know what additional responsibilities it will have to assume in relation to land acquired in trust. Here, the Regional Director noted that there would be few additional responsibilities because this parcel was to be used for the provision of governmental services. She found that BIA was capable of absorbing these minimal additional responsibilities. Appellants have failed to show any way in which the Regional Director did not properly exercise her discretion in considering this criterion.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's September 15, 2000, decision is affirmed. 3/

_____
Kathryn A. Lynn
Chief Administrative Judge

_____
Anita Vogt
Administrative Judge

3/ Any arguments not specifically addressed were considered and rejected.